

**PUBLIC VERSION OF DOCUMENT FILED UNDER SEAL**

January 11, 2016

**Served via CM/ECF**

The Hon. William H. Orrick III  
U.S. District Judge  
450 Golden Gate Ave  
San Francisco, California 94102

**Re: Subpoena for Testimony of David Daleiden  
and Center for Medical Progress**

Your Honor:

We were recently informed that David Daleiden, on behalf of the Center for Medical Progress, has been subpoenaed to testify [REDACTED]. Mr. Daleiden and CMP are represented by [REDACTED] counsel in connection with that investigation.<sup>1</sup>

A copy of the subpoena is attached hereto as Exhibit A [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>1</sup> Certain videos covered by the TRO were inadvertently produced by [REDACTED] counsel [REDACTED] in December of 2015. As soon as it was brought to our attention, we notified [REDACTED] counsel, who immediately contacted the [REDACTED] office and arranged for the return or deletion of the protected material. The undersigned counsel also spoke directly to [REDACTED] personnel to confirm that the material had not been viewed by [REDACTED] and was being deleted.

Mr. Daleiden is scheduled to appear and testify [REDACTED] It is anticipated that the subject matter of questions put to Mr. Daleiden [REDACTED] may well touch upon matters currently prohibited from disclosure by this Court's TRO.

A review of federal precedents in this area of law dealing with [REDACTED] proceedings [REDACTED] [REDACTED] would preclude federal judicial interference with [REDACTED] process. [REDACTED] [REDACTED] This clearly mandated deference [REDACTED] [REDACTED] appears to bar any federal interference with the duty of a [REDACTED] witness to testify truthfully and forthrightly as to any question put to that witness [REDACTED]

Further, of particular relevance in this regard is the fact that this Court's TRO was principally premised on Plaintiff NAF's California contract law claim, as contract law in California, as elsewhere, is clear that a party to a contract may not be silenced or barred from testifying [REDACTED] by any mere private contractual commitment. [REDACTED]

We believe that this Court has made clear that it does not read the TRO to prohibit [REDACTED] from receiving materials covered by the TRO via proper subpoenas. Here, as the subpoena seeks live testimony—the scope and content of which is and will [REDACTED] [REDACTED]—it would seem difficult or even impossible to impose a requirement that [REDACTED] [REDACTED] meet and confer with NAF attorneys before asking Mr. Daleiden specific questions or that Mr. Daleiden meet and confer with NAF attorneys before providing answers. Moreover, for reasons stated above, any such requirement would also appear to violate [REDACTED]

Counsel thus believes that Mr. Daleiden should testify fully and forthrightly before the [REDACTED], including as to information he may have obtained or interactions he had at the 2014 and 2015 NAF Annual Meetings, regarding the activities of [REDACTED]

Counsel respectfully requests guidance from the Court if it wishes Mr. Daleiden or CMP to proceed in some other manner.

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cc: All Counsel of record